

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

10
11
12
13
14
15

10

11

12

12

13
14
15

16
17
18
19
20
21
22
23
24
25
26
27

28

1 Most of Plaintiff's argument appears, however, to be directed to this court's finding (ECF No.
2 18) that there was no "substantial question" as to Plaintiff's mental competence and the denial of
3 Plaintiff's request to appoint Plaintiff a guardian ad litem contained within his motion to appoint
4 counsel (ECF No. 6). However, Plaintiff once again also requests the court revisit its decision not to
5 appoint counsel. The court will address each component of Plaintiff's motion separately.

6 **I. Reconsideration of Mental Competency**

7 Other than Plaintiff's restated complaints of misconduct by the Office of the Attorney General
8 and NDOC's medical staff, Plaintiff's motion presents no new information, medical or psychological,
9 which would cause the court to reverse its prior decision on the apparent mental competency of
10 Plaintiff.

11 The component of Plaintiff's motion related to reconsideration of the court's finding there is
12 no substantial question as to Plaintiff's competency is **DENIED**.

13 **II. Denial of Appointment of Counsel**

14 A litigant in a civil rights action does not have a Sixth Amendment right to appointed counsel.
15 *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). In very limited circumstances, federal
16 courts are empowered to request an attorney to represent an indigent civil litigant. The circumstances
17 in which a court will grant such a request, however, are exceedingly rare, and the court will grant the
18 request under only extraordinary circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796,
19 799-800 (9th Cir. 1986); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

20 A finding of such exceptional or extraordinary circumstances requires that the court evaluate
21 both the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to articulate his
22 claims in light of the complexity of the legal issues involved. Neither factor is controlling; both must
23 be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991),
24 *citing Wilborn, supra*, 789 F.2d at 1331.

25 With respect to the *Terrell* factors, Plaintiff has not demonstrated exceptional circumstances
26 which prevent Plaintiff from articulating his claims. As reflected in the Minutes of Proceedings of the
27 court's hearing on July 23, 2018, Plaintiff is not currently prescribed any psychiatric medication and
28 found there is no substantial question as to Plaintiff's mental competence. (ECF No. 18 at 2.) The

1 court found Plaintiff to be able to articulately and knowledgeably discuss and argue the issues
2 addressed by the court at the July 23, 2018, hearing.

3 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

4 If all that was required to establish successfully the complexity of the
5 relevant issues was a demonstration of the need for development of
6 further facts, practically all cases would involve complex legal issues.
7 Thus, although Wilborn may have found it difficult to articulate his
8 claims *pro se*, he has neither demonstrated a likelihood of success on
9 the merits nor shown that the complexity of the issues involved was
10 sufficient to require designation of counsel.

11 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying the
12 request for appointment of counsel because the Plaintiff failed to establish the case was complex as
13 to facts or law. 789 F.2d at 1331.

14 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of the
15 likelihood of success on the merits of his claims. Plaintiff does not address this element in his motion,
16 which is a requirement of the Court of Appeals for the Ninth Circuit. *See, Wilborn, supra; Terrell,*
17 *supra.*

18 Plaintiff states that as a *pro se* inmate, he is hampered by his inability to investigate the claims
19 and defenses, pursue depositions, interview witnesses, etc. While any *pro se* inmate such as
20 Mr. Garrison would likely benefit from services of counsel, that is not the standard this court must
21 employ in determining whether counsel should be appointed. *Wood v. Housewright*, 900 F.2d 1332,
22 1335-1336 (9th Cir. 1990).

23 The United States Supreme Court has generally stated that although Congress provided relief
24 for violation of one's civil rights under 42 U.S.C. § 1983, the right to access to the courts is only a
25 right to bring complaints to federal court and not a right to discover such claims or to litigate them
26 effectively once filed with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

27 The Court does not have the power "to make coercive appointments of counsel." *Mallard v.*
28 *U. S. Dist. Ct.*, 490 US 296, 310 (1989). Thus, the Court can appoint counsel only under exceptional
circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) [cert den 130 S.Ct. 1282 (2010)].
Those exceptional circumstances do not exist in this case and Plaintiff's motion for appointment of
counsel is denied.

1 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion to Seal Request for
2 Reconsideration (ECF No. 19) and Motion for Reconsideration of Appointment of Counsel (ECF No.
3 20).

4 Plaintiff is again reminded that pursuant to the court's orders (ECF Nos. 9, 17), the deadline
5 to file Plaintiff's Amended Complaint is **August 24, 2018**.

6 **IT IS SO ORDERED.**

7 DATED: August 7, 2018.

8
9 

10

WILLIAM G. COBB
11 UNITED STATES MAGISTRATE JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28